

General Orientation for Judges

Structure of the Competition

You will be seeing two heats of each round. That is, you will be watching two sets of teams negotiate the same problem. During the first heat, you will be evaluating each of the two teams on seven criteria listed on the Evaluation Criteria Form (Attachment A). During the second heat, you will evaluate the next two teams on the same criteria form. Also after the second heat, you will be ranking the four teams from most effective to least effective on the Ranking Sheet. (Attachment B).

The teams will negotiate for 45 minutes. Each team is allowed to call for a five-minute break or caucus during the 45-minute period, but the clock keeps running so any time in caucuses comes out of the 45-minute session. At the end of 45 minutes, both teams will leave the room to prepare for their self-evaluations. During this ten minute break, you should evaluate both teams on the first five criteria on the Evaluation Criteria form. After 10 minutes, the first team will come in and answer the two self evaluation questions listed on the Evaluation Criteria Form:

- (1) "In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?"
- (2) "How well did your strategy work in relation to the outcome?"

You may also ask clarifying questions during this ten-minute session. The purpose of these questions is to help you evaluate the teams, not to give feedback. Thus, it is appropriate during this period to ask a team why they turned down an offer or why they called a caucus, but not to comment on the answer. Feedback can be offered after both teams have done their self-evaluation (and you are provided with a comment sheet you can make notes on to help you during the feedback sessions). You should complete the final two criteria of the Evaluation Criteria Form at the end of this self-evaluation session. You may also revise your scores on the first five criteria in light of the self-analysis. Thus, if you had rated a team with a "5" on the outcome of session criterion, but were convinced by the team's self-evaluation that they had taken a creative and original approach that had advanced their client's interests in ways you had not seen, you could change the score to make it much better.

After the first team in the heat completes its self-evaluation, the second team comes in and the process repeats itself. That completes the scoring events for the first heat. You will then finalize your **Evaluation Criteria Form** and have an opportunity to give the teams feedback in a joint session. The feedback session is a joint meeting of both teams. Each judge should give each team (each member of each team if possible) feedback: (1) what they did well; (2) areas where they could improve. Students have been working really hard on their preparations and are looking for informative feedback.

Hearing what they did well first helps them hear the suggestions about how they could improve. And you should try to be diplomatic in expressing the ways that they could improve. (e.g. **don't say "it was stupid to bid against yourself"** do say **"I have found a good rule not to bid against yourself;**

when you lowered your demand, the other side had not given a counter offer; instead of lowering your offer, you could have told the other side: ‘in light of those concerns, what are you willing to offer?’”

After the first heat, the exact same process takes place during the second heat. At the end of the self-evaluation portion of the second heat, each judge fills out not only the Evaluation Criteria Form for the two teams in the second heat, but the **Ranking Sheet** on which you will be ranking each of the four teams as most effective to least effective.

Scoring: On all forms, the scoring system is like a round of golf, the lowest score is best. There are forty teams participating in two preliminary rounds. At the end of the preliminary rounds, the four teams with the lowest scores advance to the finals. The first method for determining who advances to the finals is lowest total score on the Ranking Sheet.

If, as is likely, there is a tie for the top four positions, your rankings on the Evaluation Criteria Form will be used to break the tie. The first tie-breaker will be whether you found any ethical violations which were not serious enough to disqualify the team, but were substantial enough to be called ethical violations. The next tie breakers are overall score on the Evaluation Criteria Form; then lowest overall score on Outcome of the Negotiation; and finally lowest score on the self-evaluation. **Bottom line:** both of the scoring forms are likely to play a crucial role in determining who advances to the finals.

Filling out the Evaluation Criteria Form During the Heat.

The Evaluation Criteria Form is fairly self-explanatory. There are seven criteria to be evaluated: planning, flexibility, outcome, teamwork, relationship between the parties, self-evaluation and ethics. The first five criteria are filled in at least tentatively during the 45-minute negotiation period and the 10-minute break before the self-evaluation. The final-two criteria are filled out at the end of the self-evaluation. As to all scored criteria, the scores run from 1 which is best and 7 which is worst. 4 is the neutral score. You should start with 4 and only move up or down as you observe the team’s performance during the negotiation and convinces you that they did better or worse than neutral on that criterion and by how much.

Ethical Violations. The one criterion on the evaluation form that requires some discussion is criterion VII – negotiating ethics. This is not a scored criterion, but rather a potential disqualifier. You are asked whether each team observed ethical standards and to circle either “observed ethical standards” or “team violated ethical standards.” If you concluded that the team violated ethical standards, then you must determine whether the violation should disqualify the team or not. In deciding whether an ethical violation took place there are two examples given: (1) did the team misrepresent material facts? (2) did the team invent self-serving material facts? Any other serious violation of ethics may also be considered.

For purposes of this competition, we emphasize ethical accuracy because each team has confidential facts which the other side does not know. If a team makes up material facts or deliberately

misleads the other side about material facts, there is no way for the opposing team to know this because the opposing team may reasonably believe that the other team has been given that information in their confidential facts.¹ *Note that it is not unethical to misrepresent your client's instructions or mislead the other side about the limits of your authority.* This is because ethical rules do not consider such as “material facts” and negotiations would be impossible if the each side were ethically required to disclose the least their client would take or the most their client would give. Please also note that for purposes of this competition, we will not consider exceeding your client’s authority or otherwise violating client’s instructions as an ethical violation. Rather, you should consider such transgressions very strongly on the evaluation sheet in the “outcome of session” category. Any team that agrees to provisions that violate the instructions from their client should receive a poor score on that category. Moreover, when you fill out the ranking sheet, you should consider the violation of client instructions a strong negative factor in assessing the effectiveness of a team.

If you decide there is an ethical violation, you must decide whether the team should be disqualified as a result of the violation. You should base this decision on how much the ethical violation affected the negotiation, and whether the violation was deliberate and strategic or accidental and unplanned. Please note that even if you find the ethical violation was not disqualifying, a finding that a team did not act ethically is a serious one and it is the first tiebreaker in advancing to the finals. So, if you conclude that a team committed an ethical violation, it is unlikely that they can advance in the competition. This means you should find an ethical violation only if you find that it is both serious and substantial (though not necessarily disqualifying).

Filling out the Ranking Sheet at the End of the Two Heats:

After observing both heats, you will be asked to fill out the Ranking Sheet which asks you to rate the four teams from most effective to least effective. Again, the lowest number is the best. You are not bound by your scores on the Evaluation Criteria, but are asked to make an independent judgment of who was most effective (which team you would most want to represent you in a matter of similar complexity in real life). A team does not have to reach an agreement in order to be rated most effective. In the real world, deals this complicated would not be completed within 45 minutes. And even if a deal is offered, an effective team does not have to accept it if it would not advance the interests of their client. Making the determination of effectiveness is not a matter of who got the best result for their client, but rather, which team was most effective in representing its client’s interests given the constraints placed on it by their

¹The situation is further complicated because teams are allowed to do outside research and use it in the negotiation as long as (1) they clearly identify it as the results of research and not confidential facts); (2) it is from sources available to all competitors without payment of fees, and (3) it is not inconsistent with the facts given to the teams. Thus, a team in round 1 could research what kind of ownership deals other professional athletes had made (option, stock purchase, other) and inform the other side that their research shows a particular athlete made an option deal with another team even though that fact is not in the confidential facts as long as they made clear that the deal they were describing was not one described in their confidential research (The term “According to our research, Forbes magazine indicates that ...)

client and the problem. Thus, a team with little leverage that worked out a deal within its client's instructions and met their client's interests may be rated better than a team with more leverage that missed opportunities for a better deal by using that leverage too aggressively. A determination of effectiveness also includes communication skills and how effectively the team established a relationship with the other side especially because all of the deals are transactional and involve a continuing relationship between the parties. The Ranking Sheet list criteria you should consider in determining effectiveness, but in the end this is a subjective judgment we are asking each judge to make.

Relationship Between the Evaluation Criteria Form and the Ranking Sheet Form

You will be filling out the Evaluation Criteria form before you fill out the Ranking Sheet Form. It is our intention that the Ranking Sheet be your judgment about which team was most effective, next effective, next effective and least effective without directly using the scores on the Evaluation Criteria Form to determine this. Thus, you should not simply add up your scores for each team and rank them according to which team scored best. On the Ranking Sheet, we are asking you to make a judgment on the overall effectiveness of the teams as compared to the other teams. This is to be your real-world assessment of which team did the best overall job of representing their clients. (On the Evaluation Criteria, you are rating specified individual criteria). The Ranking Sheet asks you to make your own judgment based on the criteria mentioned there; one way to look at it is if you were to be a client in a similar matter, which team would you want representing you.

There is another way in which the Evaluation Criteria do not govern the Ranking Sheet. You may have a round where you thought all teams performed poorly; you still have to rate the teams one through four against each other and find that a team was most effective even though you thought that team was not very effective (but was more effective than the other three teams). Conversely, you may have a round where you thought all four teams performed excellently; you will still have to rate one of the teams least effective.

RANKING SHEET

(Each judge should receive one copy of ranking sheet.)

This sheet should be completed only after observing all four teams.

Judge's Name: _____ Cell #: _____ Date: _____ Room #: _____

Negotiation judged:

(Please circle the competition level—Regional or National, and mark the round observed.)

Regional Competition Round #1 _____ Round #2 _____ Final: _____

Based on my personal opinion, having observed the negotiation between teams _____ & _____ and between

_____ & _____, I rank the teams I observed as follows:

(Please fill in all blanks above and immediately below with the team letter designations.)

1 = Most effective team: _____

2 = Next most effective team: _____

3 = Third most effective team: _____

4 = Least effective team: _____

Suggested criteria:

- Remember that parties need not reach an agreement and, in some situations, the best outcome might be no agreement at all. Judges should focus on the teams' planning and the negotiation process, rather than on whether the teams reach agreement.

.A good negotiation outcome is often one that:

- Is better than the best alternative to a negotiated agreement (with this party)
- Satisfies the interests of
 - the client – very well
 - the other side – acceptably (enough for them to agree and follow through)
 - third parties – tolerably (so they won't disrupt the agreement)
- Respects clients instructions and creatively uses them to shape agreement or seek approval for agreements outside scope of authority
- Adopts a solution that is the best of all available options
- Is legitimate – no one feels "taken"
- Involves commitments that are clear, realistic, and operational
- Involves communication that is efficient and well understood, and
- Results in an enhanced working relationship or an agreement to negotiate further.
- **See judges' summaries on individual rounds for an analysis of the instructions that the teams have, the agreements that are possible, and what to look for substantively in evaluating effectiveness.**

Please note that the competition administrator will collect the Ranking Sheets and Evaluation Criteria Forms before judges provide feedback to the last two teams. They will verify that judges have completed all categories before leaving the room.

EVALUATION CRITERIA FORM—JUDGING SCALES

(Each judge should receive four copies of the Evaluation Criteria Form—Judging Scales.)

Judge's Name: _____ Cell #: _____ Date: _____ Room #: _____

Team Letter Designation: _____ Client Name: _____

Negotiation judged:*(Please circle the competition level—Regional or National / and mark the round observed)*

Round #1 _____ Round #2 _____ Final: _____

Criteria I-V should be completed following the end of the negotiation and while the teams are preparing for the self-analysis.**I. NEGOTIATION PLANNING**

This scale assesses whether the team was familiar with the facts and law and had a strategy and tactics reasonably designed to the situation set out in the fact pattern. How well-prepared was this team, judging from its performance and its apparent strategy?

7	6	5	4	3	2	1
Very Unprepared	Unprepared	Somewhat Unprepared	Neutral	Somewhat Prepared	Prepared	Highly Prepared

II. FLEXIBILITY IN DEVIATING FROM PLANS OR ADAPTING STRATEGY

This scale assesses whether the negotiators seemed responsive to the negotiation as it unfolded or whether their strategy and tactics seemed scripted or otherwise pre-planned in a way that did not work effectively in the context of the actual negotiation. Was this team able to adapt its strategy to for example, to new information or to unforeseen moves by the opposing team?

7	6	5	4	3	2	1
Very Inflexible	Inflexible	Somewhat Inflexible	Neutral	Somewhat Flexible	Flexible	Highly Flexible

III. OUTCOME OF SESSION

Based on what you observed in the negotiation and the self-analysis, to what extent did the outcome of the session, regardless of whether agreement was reached, serve the client's goals?

7	6	5	4	3	2	1
Goals not served at all	Goals not served	Goals somewhat not served	Neutral	Goals served somewhat	Goals served well	Goals served very well

IV. TEAMWORK

How effective were the negotiators in working together as a team, in sharing responsibility, and providing mutual backup?

7	6	5	4	3	2	1
Totally lacking in teamwork	Lacking teamwork	Somewhat lacking in teamwork	Neutral	Somewhat good teamwork	Very Good Teamwork	Excellent Teamwork

NOTE: For a single-person team, average criteria I, II, III, V, VI, and VII and enter that result (to the nearest whole number) as the teamwork rating.

V. RELATIONSHIP BETWEEN THE NEGOTIATING TEAMS

This scale focuses on word choice, attitude and tone, and implied and explicit communications. Did the way this team manage its relationship with the other team contribute to or detract from achieving its client's best interests?

7	6	5	4	3	2	1
Relationship managed very poorly	Relationship managed poorly	Relationship managed somewhat poorly	Neutral	Relationship managed somewhat well	Relationship managed well	Relationship managed extremely well

Criteria VI and VII should be completed after both teams have completed their self-analysis.

VI. SELF-ANALYSIS

Students will begin this 10-minute period by answering directly to the judges, responses to the following questions:

- (1) "In reflecting on the entire negotiation, if you faced a similar situation tomorrow, what would you do the same and what would you do differently?"
- (2) "How well did your strategy work in relation to the outcome?"

Based on the team's self-analysis during the review session, how adequately understood the negotiation dynamics and learned from today's negotiation?

7	6	5	4	3	2	1
Did not understand or learn at all	Did not understand or learn	Did not understand or learn much	Neutral	Understood And Learned Somewhat	Understood and learned well	Understood and learned extremely well

VII. NEGOTIATING ETHICS

Based on your observation, do you believe the negotiating team observed or violated the ethical standards of the legal profession? For example, 1) did the team misrepresent material facts? 2) did the team invent self-serving material facts? etc. Select and circle one:

TEAM OBSERVED ETHICAL STANDARDS or TEAM VIOLATED ETHICAL STANDARDS

If you circled TEAM VIOLATED ETHICAL STANDARDS, was the ethical violation so severe that, in your judgment, the team should be disqualified from the competition? Circle one:

YES, DISQUALIFY

NO, DO NOT DISQUALIFY

Please explain in detail:

PLEASE be sure to complete **ALL** categories before turning in this form.

The Evaluation Criteria Forms will be collected by the competition administrator **PRIOR** to the judges providing feedback to the last two teams.